

BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

KRISTEN HUMPHRIES

Respondent.

CASE No. 2011-682


OAH No. 2011060113

NOTICE OF DECISION AND ORDER

No action having been taken on the attached Proposed Decision,
pursuant to Government Code section 11517(c)(2) the attached decision
is hereby deemed adopted by operation of law on May 5, 2012.

Pursuant to Government Code section 11519, this Decision shall become
effective on June 4, 2012.

Date: May 5, 2012.


Louise R. Bailey, M.Ed., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

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PROPOSED DECISION

Administrative Law Judge Danette C. Brown, Office of Administrative Hearings (OAH), State of California, heard this matter in Sacramento, California, on September 20, 2011.

Arthur D. Taggart, Deputy Attorney General, represented complainant Louise R. Bailey, M.Ed., RN, in her official capacity as the Executive Officer of the Board of Registered Nursing (Board), Department of Consumer Affairs.

Kristen Humphries (respondent) was present and was represented by Jonathan C. Turner, Attorney at Law.

Evidence was received, the hearing was closed, and the matter was submitted for decision on September 20, 2011.

FACTUAL FINDINGS

1. On or after June 2, 2010, the Board received an application for licensure by endorsement from respondent.
2. On September 8, 2010, the Board denied respondent's application, pursuant to Business and Professions Code section 480, subdivisions (a)(1), (a)(2), and (a)(3), section 2761, subdivisions (a) and (f), and section 2762, subdivisions (b) and (c). The factual basis for the denial of respondent's application was her misdemeanor conviction relating to driving under the influence of alcohol.

3. On or about September 20, 2010, respondent filed a request for appeal of the denial of her application for licensure.

Respondent's Conviction

4. On October 16, 2007, in the King County District Court, West Division, Seattle Courthouse, in the matter of the *State of Washington vs. Kristen Ann Humphries*, Case No. C0545589, respondent was convicted, upon a plea of guilty, of violating Revised Code of Washington (RCW) 46.61.502, (while driving had an amount of alcohol in her body sufficient to cause a measurement of her breath to register 0.08 grams or more of alcohol per two hundred liters of breath within two hours after driving), a misdemeanor. Imposition of sentence was suspended and respondent was placed on probation for 12 months upon the following terms and conditions: serve one day in jail; pay fines and fees of \$1,105.50; attend a driving under the influence DUI victim impact panel; attend DUI school; and install an interlock ignition device on vehicle.

5. The facts and circumstances of respondent's conviction are that, on Saturday, January 27, 2007, at approximately 11:55 p.m., respondent was observed by a Washington State Patrol (WSP) officer driving towards the ferry terminal to Bainbridge Island in Seattle, Washington. Respondent and her then husband (husband) were driving home after celebrating respondent's 30th birthday in Seattle. Respondent made an illegal turn into a toll booth lane. Once she cleared the booth, the officer initiated a traffic stop. The officer tapped on respondent's window and she rolled it down. The officer immediately smelled a heavy odor of alcohol. Respondent exhibited objective signs of intoxication. Respondent exited the car, and the officer administered a series of field sobriety tests. Respondent admitted to the officer "I'm not going to lie...I had a few." Respondent was subsequently arrested for driving under the influence (DUI). She then began to argue with the officer, asking "don't you have anything better to do?" Respondent's husband, who was in the passenger seat, then began to exit the car, and the officer asked him to remain inside the car. Respondent's husband requested that the officer "let her go," and that he "could drive her home." While speaking with respondent's husband, the officer noticed that his speech was slurred, and that he had a strong odor of alcohol on his breath. His breathalyzer test showed a reading of .082 percent. The officer informed respondent's husband that he could not drive, and that the car would have to be impounded. Respondent's husband was permitted to walk onto the ferry to go home. Respondent was taken to the WSP facility, where she was administered additional breath tests. Respondent "blew" a 0.215 percent blood alcohol content (BAC) and a .213 percent BAC.

Factors in Aggravation, Mitigation, and Rehabilitation

6. On December 30, 2006, approximately four weeks prior to respondent's arrest for DUI, respondent and her husband, along with another close

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friend, all of whom were avid skydivers, were involved in a tragic accident. While skydiving, respondent saw two people collide mid-air in their parachutes. Respondent saw someone hit the ground hard. It was respondent's close friend. When she landed, respondent ran over to her friend and began cardiopulmonary resuscitation (CPR). Respondent then learned that her husband was the other person involved in the collision. Respondent's friend died on the way to the hospital, and respondent's husband survived, suffering from a fractured scapula and T-6 vertebrae (broken shoulder and back). Respondent and her husband were devastated by the loss of their friend. On January 27, 2007, respondent's husband began to feel better, and they decided to go out in Seattle to meet some friends and celebrate respondent's birthday. Respondent and her husband admittedly had too much to drink, and respondent's husband was not feeling well, so they decided to leave. Respondent would not have been driving but for respondent's husband's weakened, injured condition that night. Respondent and her husband are now divorced.

7. Respondent successfully completed an eight-hour Alcohol/Drug Information School at "A New Beginning with Advantages" on April 22, 2007. Respondent also attended a DUI Victim's Panel on April 24, 2007.

8. Respondent's DUI conviction impacted her greatly and she reflects upon it often. It did not cause her to stop drinking completely, but it did affect her social drinking in that she will not drink excessively. She admitted that at the time of her arrest, she self-medicated with alcohol due to the grief and loss she was dealing with at the time. She was drinking "shots" of hard alcohol, and remembered her friends buying her shots for her birthday. She had no plan for drinking and driving that night, but because her husband insisted on going home and was not in a condition to drive, and because she wanted her husband to be comfortable, she drove them to the ferry terminal. She did not think about the risks of drinking and driving that night. She asserted that she has paid heavily for the DUI and reflects on it often. Respondent does not see a problem with drinking at social functions, and she "won't ever drink and drive again." However, she later admitted that she drank and drove on several occasions in the past, but did not believe she posed a risk to anyone. She did not say when she had driven in the past after drinking. She has now learned how to deal with trauma and stress by deep breathing, not with alcohol. Respondent asserted that "drinking and driving will never happen again."

9. Respondent first started drinking alcohol in high school. She acknowledged that this was illegal, but a lot of people drank in high school. The first time she got drunk was when she was age 18. She did not drink and drive when she was in high school. During that time, she asserted that she did not drink excessively, which she characterized as "drinking shot after shot." Currently, respondent drinks at social functions, such as weddings, and will have a couple of drinks. She will not drive. She does not abuse alcohol. Alcohol has never impacted her employment.

10. Respondent worked as a Licensed Practical Nurse (LPN) in Washington in 2006. She worked as a private duty nurse in a residence for Avail Home Nursing, Inc. (Avail). She met all of the standards of the job related to safety, patient care, teaching, patient assessment, documentation, job relationships, interpersonal relationships, patient and public relations, professional competencies, attendance and punctuality, policies and procedures, decision-making, motivation and confidentiality. Respondent was regarded as providing excellent care to her clients.

11. In fall 2007, respondent became a Registered Nurse (RN) and continued her employment with Avail. She met all of the standards of the job set forth in Finding 10, continued to provide excellent care to her patients. Respondent positively contributed to the Avail Home Health team.

12. Respondent began working as an RN at Franciscan Health System in Washington sometime in mid 2007. She worked in the cardiac telemetry unit. Her performance evaluations for 2008 and 2009 rated her as fully competent, in that her overall performance consistent met and occasionally exceeded job standards.

13. Respondent left Franciscan Health System and began working at Swedish Medical Center in Washington as an RN in a cardiac telemetry unit in April 2009. Respondent met all of the expectations of the job in carrying out her primary job responsibilities, and consistently demonstrated patient-centered care and service, as well as respect, caring and compassion, teamwork and partnership, leadership, and dependability as an RN. Her peers enjoyed working with her, and respondent always offered assistance when things "got crazy."

14. Respondent worked as an RN for Axis Medical Staffing (Axis) in greater Seattle in 2011. She stated that she was "going from one hospital to another." Axis evaluated respondent's job performance in July 2011, rating her as above average in the areas of: quality of work, therapy process, and personal matters such as appearance and dress code, punctuality, attitude, initiative, and recognizing limitations. Respondent was rated as "distinguished" – the highest employee evaluation rating – in the areas of: assignment completion, patient evaluation, effective communication skills, and documentation related to plan of care, preparing documents in a timely manner. Respondent was regarded as a very reliable and dependable nurse.

15. The registered nursing authority in Washington State knows of respondent's conviction. Respondent has not had her nursing license disciplined, and respondent is not aware of any investigation involving her nursing license in Washington.

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16. Respondent is 35 years old. She is not married, and has no children. She has friends and family in California, as well as a boyfriend, whom she has known for six years. Respondent currently lives in California, and occasionally travels to Washington State to keep her RN license current. Her current job is doing camera work for skydiving on weekends. She takes still pictures and videos.

17. Respondent submitted 20 character reference letters which were received in evidence and considered to the extent permitted by Government Code section 11513, subdivision (d).¹ All of the letters provide overwhelming support for respondent's application as a registered nurse. Respondent's ex-husband, Jay Humphries, stated that respondent has always taken her nursing studies and employment very seriously. Mr. Humphries explained the circumstances of the tragic skydiving accident in 2006, and further stated that respondent watched their close friend spiral to the ground. Respondent landed, dropped her gear, and was the first to administer CPR to a dying friend. When respondent learned that Mr. Humphries was also involved in the collision, respondent ran up to Mr. Humphries before being taken to the hospital. Mr. Humphries can never fully describe the grief that was on respondent's face at the moment she ran up to see him. Mr. Humphries shares some of the responsibility of respondent's DUI conviction. He stated that respondent would not have gone anywhere near the car had he not been feeling in the weakened condition he was in that night. Respondent's commitment and love to Mr. Humphries is what spurred her decision to drive that night.

Many other letters from respondent's friends and family unanimously describe respondent as a hard-working, disciplined, caring, and responsible person. Most everyone spoke of her DUI conviction, and related that this was a single mistake and a lapse in judgment.

The depth and breadth of the individuals writing on respondent's behalf is truly remarkable. In addition to her immediate family, respondent's supporters included: respondent's skydiving community, members of the armed forces, nursing and hospital colleagues, a dentist, a chiropractor, a certified public accountant, a Chief Executive officer of a corporation, a firefighter, and others. All speak highly of respondent's character and integrity.

18. Respondent testified in a credible and direct manner. She is still clearly haunted by the skydiving accident, and Respondent's attitude has changed significantly since the conduct underlying her conviction. Respondent understands that her conduct on January 27, 2007, reflected extremely poor decisions on her part.

¹ Government Code section 11513, subdivision (d), provides, in pertinent part, that "[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions"

She understands that her behavior posed a real risk of harm to the public. Respondent further understands that the responsibilities of a nurse require consistent good judgment.

19. The potential for harm from respondent's past DUI, especially when considering the circumstances of her good friend's death weeks before, is extremely low. This was an isolated event that occurred over four and a half years ago. Respondent assures it will never happen again. Respondent completed probation in 2008.

Under these circumstances, it would not be contrary to the public interest to allow respondent to work as a registered nurse under a probationary license, subject to the conditions outlined below.

LEGAL CONCLUSIONS

1. *Burden of Proof*: The burden of proof is on the applicant for a license. (*Martin v. Alcohol Beverage Control Appeals Bd.* (1959) 52 Cal.2d 238.) In addition, rehabilitation is akin to an affirmative defense; the burden of proof of establishing an affirmative defense is on the proponent of that defense. (*Whetstone v. Board of Dental Examiners* (1927) 87 Cal.App. 156, 164.)

2. Pursuant to Business and Professions Code section 2736, subdivision (c), an applicant for licensure as a registered nurse must not only satisfy educational requirements, but "not be subject to denial of licensure under Section 480."²

3. Section 480, subdivision (a), establishes that a licensing board may deny an application for licensure upon one of the following grounds, including where the applicant has:

(1) Been convicted of a crime. . .

[] . . . [], or

(3) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made. . .

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Unless otherwise indicated, all statutory references are to the California Business and Professions Code.

4. Section 490 states, in pertinent part:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

5. Pursuant to section 2761, the Board may deny an application for a certificate or license for any of the following, including:

(a) Unprofessional conduct, . . .

[¶] . . . [¶]

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

6. Section 2762 provides that it is unprofessional conduct for a person to:

(b) Use . . . alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the . . . consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, . . . , in which event the record of the conviction is conclusive evidence thereof.

Substantial Relationship

7. California Code of Regulations, title 16, section 1444, provides that a conviction or act "shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare." The abuse of alcohol to an extent that results in BAC levels of .215 and .213, and a DUI conviction, evidences both real and potential unfitness of a nurse to safely practice the profession. Consequently,

respondent's conviction is substantially related to the qualifications, functions or duties of a registered nurse.

As set forth in the Factual Findings and Legal Conclusions as a whole, and specifically in Findings 4 and 5, respondent's conviction establishes legal cause for the Board's denial of her application under Business and Professions Code sections 480, subdivision (a)(1) and (a)(3); section 2736, subdivision (c); section 2761, subdivisions (a) and (f); and 2762, subdivisions (b) and (c).

Rehabilitation

8. California Code of Regulations, title 16, section 1445, subdivision (a), provides that:

When considering the denial of a license under Section 480 of the code, the board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

9. As set forth in the Factual Findings and Legal Conclusions as a whole, and particularly in Findings 6 through 19, respondent has taken substantial steps toward rehabilitation. She completed her criminal probation in 2008. It would not be contrary to the public interest to grant her a probationary license at this time, subject to her strict compliance with the terms and conditions outlined below.

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ORDER

The application of respondent Kristen Ann Humphries for licensure is hereby granted. Upon successful completion of the licensure examination and all other licensing requirements, a license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed, and respondent placed on probation for a period of two (2) years on the following conditions:

1. **OBEY ALL LAWS** - Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

2. **COMPLY WITH THE BOARD'S PROBATION PROGRAM** - Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, respondent's license shall be fully restored.

3. **REPORT IN PERSON** - Respondent, during the period of probation, shall appear in person at interviews/ meetings as directed by the Board or its designated representatives.

4. **RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE** - Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when he or she resides outside of California. The respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing license during the term of probation.

5. **SUBMIT WRITTEN REPORTS** - Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives. Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he has a registered nurse license.

6. **FUNCTION AS A REGISTERED NURSE** - Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board. For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any nondirect patient care position that requires licensure as a registered nurse. The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If respondent has not complied with this condition during the probationary term, and the respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

7. ~~EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS~~

Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to his employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, respondent shall notify the Board in writing within seventy-two (72) hours after she obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after he is terminated or separated, regardless of cause, from any nursing or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

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8. SUPERVISION - Respondent shall obtain prior approval from the Board regarding respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.

(c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.

(d) Home Health Care - If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by the respondent with or without respondent present.

9. EMPLOYMENT LIMITATIONS - Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If the respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

10. COMPLETE A NURSING COURSE(S) - Respondent, at her own expense, shall enroll and successfully complete a course/(s) relevant to the practice of registered nursing no later than six months prior to the end of her probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course/(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course/(s). The Board shall return the original documents to respondent after photocopying them for its records.

11. VIOLATION OF PROBATION - If respondent violates the conditions of her probation, the Board after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of the respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

12. LICENSE SURRENDER - During respondent's term of probation, if she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender her license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation.

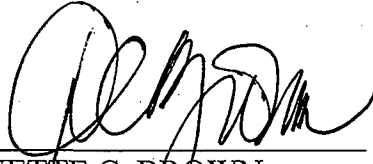
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Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- (1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
- (2) One year for a license surrendered for a mental or physical illness.

13. SEVERABILITY CLAUSE – Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

DATED: October 18, 2011



DANETTE C. BROWN
Administrative Law Judge
Office of Administrative Hearings

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7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues
12 Against:

Case No. 2011-682

13 **KRISTEN ANN HUMPHRIES**
882 Mentone Avenue
14 Grover Beach, CA 93433

STATEMENT OF ISSUES

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
19 her official capacity as the Executive Officer of the Board of Registered Nursing (Board),
20 Department of Consumer Affairs.

21 2. On or about June 7, 2010, the Board of Registered Nursing (Board) received an
22 application for a Registered Nurse License by Endorsement from Kristen Ann Humphries
23 (Respondent). On or about June 2, 2010, Respondent certified under penalty of perjury to the
24 truthfulness of all statements, answers, and representations in the application. The Board denied
25 the application on September 8, 2010.

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1 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
2 of the business or profession for which the licensee's license was issued.

3 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
4 conviction following a plea of nolo contendere. Any action that a board is permitted to take
5 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
6 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
7 made suspending the imposition of sentence, irrespective of a subsequent order under the
8 provisions of Section 1203.4 of the Penal Code."

9 6. Section 2761 states, in pertinent part:

10 "The board may take disciplinary action against a certified or licensed nurse or deny an
11 application for a certificate or license for any of the following:

12 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

13

14 "(f) Conviction of a felony or of any offense substantially related to the qualifications,
15 functions, and duties of a registered nurse, in which event the record of the conviction shall be
16 conclusive evidence thereof."

17 7. Section 2762 states, in pertinent part:

18 "In addition to other acts constituting unprofessional conduct within the meaning of this
19 chapter do any of the following:

20

21 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
22 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
23 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
24 himself or herself, any other person, or the public or to the extent that such use impairs his or her
25 ability to conduct with safety to the public the practice authorized by his or her license.

26 "(c) Be convicted of a criminal offense involving the prescription, consumption, or
27 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
28 or the possession of, or falsification of a record pertaining to, the substances described in

subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof."

REGULATORY PROVISIONS

8. California Code of Regulations, title 16, section 1444 states, in pertinent part:

"A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare.

FIRST CAUSE FOR DENIAL OF APPLICATION

(Conviction of a Crime)

9. Respondent's application is subject to denial under sections 2761 subdivision (f) and 480 subdivision (a)(1), in that Respondent was convicted of a crime. On or about May 3, 2007, after pleading guilty, Respondent was convicted of one misdemeanor count of violating RCW 46.61.502 [driving under the influence of intoxicating liquor and/or drugs] in the criminal proceeding entitled *The State of Washington v. Kristen Ann Humphries* (Dist. Ct. King County, 2007, No. C00545589). The Court sentenced Respondent to 365 days in jail, with 364 days suspended, and placed her on 12 months probation, with terms and conditions. The circumstances surrounding the conviction are that on or about January 27, 2007, during a traffic stop by the Washington State Highway Patrol, Respondent was contacted. While speaking to Respondent, the officer detected a strong odor of intoxicants emitting from within the vehicle. She was observed to have watery bloodshot eyes, a thick and slurred speech, and a strong odor of intoxicants emitting from her breath. When asked how much she had to drink, Respondent stated, "I'm not going to lie...I had a few." During the booking procedure, Respondent submitted to a breath test that resulted in a blood-alcohol level of 0.21%.

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SECOND CAUSE FOR DENIAL OF APPLICATION

(Acts Warranting Denial of License)

10. Respondent's application is subject to denial under section 480, subdivision (a)(3)(A) and (a)(3)(B), in that Respondent committed acts which if done by a licentiate of the business or profession in question would be grounds for suspension or revocation of her license, as follows:

a. Respondent was convicted of a crime substantially related to the qualifications, functions, or duties of a registered nurse which to a substantial degree evidence her present or potential unfitness to perform the functions authorized by her license in a manner consistent with the public health, safety, or welfare, in violations of sections 2761, subdivision (f) and 490, in conjunction with California Code of Regulations, title 16, section 1444. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 9, as though set forth fully.

b. Respondent used alcoholic beverages to an extent or in a manner dangerous and injurious to herself, and the public, when she operated a vehicle while having a blood alcohol content level of 0.21%, in violation of section 2761, subdivision (a), as defined in section 2762, subdivision (b). Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 9, as though set forth fully.

c. Respondent was convicted of a criminal offense involving the consumption of alcohol, in violation of section 2761, subdivision (a), as defined in section 2762, subdivision (c). Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 9, as though set forth fully.

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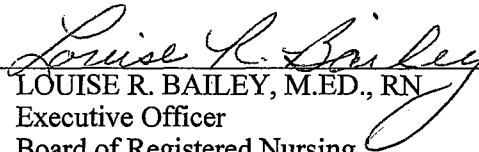
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Denying the application of Kristen Ann Humphries for a Registered Nurse License by Endorsement; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 2/4/2011


LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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